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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,410	06/23/2003	Joseph P. Desmond	BSCU-039/00US 027060-2227	7691
22903 7590 11/30/2009 COOLEY GODWARD KRONISH LLP ATTN: PATENT GROUP Suite 1100 777 - 6th Street, NW WASHINGTON, DC 20001				
EXAMINER				
SZPIRA, JULIE ANN				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
11/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/601,410	Applicant(s) DESMOND, JOSEPH P.
Examiner JULIE A. SZPIRA	Art Unit 3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10, 17-23, 27-29, and 32-47.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731

/Julie A Szpira/
Examiner, Art Unit 3731

Continuation of 11. does NOT place the application in condition for allowance because: The arguments in response to the Final Office Action are not persuasive.

The first hollow member (115) is inserted into the second hollow member (112) and then is locked with the wedge (132). The first hollow member is not integrally formed with the second hollow member and thus they can be moveably coupled to one another prior to the first and second member being locked with the wedge. Furthermore, the term "movably coupled" doesn't fully define what the present invention means to claim. "Coupled" implies that the two members are joined together, and "moveably" implies that they can move. Without a limitation to define that the two members are movable relative to one another in their coupling, simply having the two members coupled, and then have them capable of moving, the prior art meets the present claim limitations.

Furthermore, the wedge in a first configuration does not contact the first or second member, and then when placed in the second configuration the first member is locked in relation to the second member. Due to the material comprising the first member, the first member has a degree of flexibility and therefore deformation. When the wedge is in the first configuration, the first member is not deformed, however when the wedge is placed in its second, locked, configuration, it contacts the first hollow member and causes a slight deformation to allow a secure fit between the first hollow member and the second hollow member. That deformation moves the first hollow member in relation to the second hollow member, and therefore, the first and second hollow member are moveably coupled to one another.

In regards to the length of the device, the deformation previously described will alter the length of the device and having a marker to visualize that the change in length of the first hollow member would be obvious to allow one to visualize that the wedge locking member has correctly seated within the device to lock the first and second hollow members. .